



M006091-AC

United States
Department of
Agriculture

CERTIFIED RECEIPT REQUESTED

Office of
Administrative
Law Judges

November 9, 2010

Hearing Clerk

Room 1031
South Building

Julie McGuire
d/b/a Shelly Acres
HC01, Box 70
Hermitage, MO 65668

1400 Independence
Avenue SW

Washington, DC
20250-9200

Dear Respondent:

(202) 720-4443
(202) 720-9776 fax

**Subject: In re: Julie McGuire, d/b/a Shelly Acres, Respondent –
AWA Docket No. 10-0046**

Enclosed is a copy of the Default Decision and Order, issued in this proceeding by Chief Administrative Law Judge Peter M. Davenport on November 8, 2010.

Each party has thirty (30) days from the service of this default decision and order in which to file an appeal to the Department's Judicial Officer.

If no appeal is filed, the Default Decision and Order shall become binding and effective as to each party thirty-five (35) days after its service. However, no decision or order is final for purposes of judicial review except a final order issued by the Secretary or the Judicial Officer pursuant to an appeal.

In the event you elect to file an appeal, an original and three (3) copies are required. You are also instructed to consult § 1.145 of the Uniform Rules of Practice (7 C.F.R. § 1.145) for the procedure for filing an appeal.

Sincerely,


L. EUGENE WHITFIELD
Hearing Clerk

Enclosure(s)

Sent to: Sharlene Deskins, OGC
Ruth Ann McDermott, APHIS

caa: 11/9/2010

2010 NOV 2 PM 1:13

RECEIVED

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

AWA Docket No. 10-0046

In re: Julie McGuire, d/b/a
Shelty Acres,

Respondent

Default Decision and Order

Preliminary Statement

This proceeding was instituted under the Animal Welfare Act ("Act"), as amended (7 U.S.C. § 2131 et seq.), by an complaint filed by the Administrator, Animal and Plant Health Inspection Service ("APHIS"), United States Department of Agriculture, alleging that the Respondent willfully violated the Act and the regulations issued thereunder (9 C.F.R. § 1.1 et seq.). Copies of the complaint and the Rules of Practice governing proceedings under the Act, 7 C.F.R. §§ 1.130-1.151, were served on the Respondent by regular mail on December 29, 2009 after the attempt to serve the Complaint by certified mail was returned as unclaimed. The Respondent was informed in the letter of service that an answer should be filed pursuant to the Rules of Practice and that failure to answer any allegation in the complaint would constitute an admission of that allegation.

The Respondent failed to file an answer to the complaint within the time prescribed in Section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)). Section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)) provides that the failure to file an answer within the time provided in section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)) and the failure to deny or otherwise respond to an allegation of the complaint shall be deemed an admission of the allegations in the complaint.

Section 1.139 of the Rules of Practice (7 C.F.R. § 1.139) provides that the failure to file an answer constitutes a waiver of hearing. Accordingly, the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. Julie McGuire, hereinafter referred to as the Respondent, is an individual with a mailing address in Hermitage, Missouri.
2. The Respondent, at all times material herein, was operating as a dealer as defined in the Act and the regulations.
3. The Respondent at various times since 1999 has held a license which has either been terminated or expired. The respondent's last license expired on September 3, 2004. While the Respondent was licensed and annually she received copies of the Act and the regulations and standards issued thereunder and agreed in writing to comply with them.
4. On or about December 28, 2004 and continuing thereafter the Respondent sold dogs without a valid USDA license, in willful violation of section 2.1(a)(1) of the regulations (9 C.F.R. § 2.1(a)(1)). The Respondent sold, in commerce, at least 19 animals for resale for use as pets. The sale of each animal constituted a separate violation.
5. On January 13, 2005, APHIS inspected Respondent's premises and found that the Respondent had failed to maintain programs of adequate veterinary care under the supervision and assistance of a doctor of veterinary medicine, in willful violation of section 2.40(a)(1) of the regulations (9 C.F.R. § 2.40(a)(1)).

6. On January 13, 2005, APHIS inspected Respondent's premises and found that Respondent had failed to identify all live dogs on the premises, in willful violation of section 2.50(a)(1) of the regulations (9 C.F.R. § 2.50(a)(1)).

7. On January 13, 2005, APHIS inspected Respondent's premises and found that Respondent had failed to keep and maintain records which fully and correctly disclose information concerning each dog purchased or held, in willful violation of section 2.75(a)(1) of the regulations (9 C.F.R. § 2.75(a)(1)).

8. On January 13, 2005, APHIS inspected the Respondent's facility and found the following willful violations of section 2.100(a) of the regulations (9 C.F.R. § 2.100(a)) and the standards specified below:

a. Respondent failed to keep and maintain interior surfaces impervious to moisture, in willful violation of section 3.2(d) of the regulations (9 C.F.R. § 3.2(d));

b. Outdoor housing facilities failed to provide shelter which provided wind and rain breaks at the entrance, in willful violation of section 3.4(b)(3) of the regulations (9 C.F.R. § 3.4(b)(3));

c. Respondent failed to provide clean and dry bedding to dogs housed in outdoor shelters, in willful violation of section 3.4(b)(4) of the regulations when the temperature was in the 30 degrees Fahrenheit range (9 C.F.R. § 3.4(b)(4));

d. Respondent failed provide primary enclosures which securely contained the animals, in willful violation of section 3.6(a)(2)(iii) of the regulations (9 C.F.R. § 3.6(a)(2)(iii)); and

e. Respondent failed to provide housing that was clean and free from an accumulation of junk, in willful violation of section 3.11 (c) of the regulations (9 C.F.R. § 3.11 (c)).

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. By reason of the facts set forth in the "Findings of Fact" above, the Respondent has willfully violated the Act and regulations promulgated under the Act.

Order

1. Respondent, her agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the Act and the regulations and standards issued thereunder, and in particular, shall cease and desist from:

a. Engaging in any activity for which a license is required under the Act and regulations without being licensed as required;

b. Failing to establish and maintain programs of disease control and prevention, euthanasia, and adequate veterinary care under the supervision and assistance of a doctor of veterinary medicine;

c. Failing to individually identify animals, as required;

d. Failing to maintain records of the acquisition, disposition, description, and identification of animals, as required.

e. Failing to construct and maintain housing facilities for animals so that surfaces may be readily cleaned and sanitized or be replaced when necessary;

f. Failing to provide animals with adequate shelter from the elements;

g. Failing to keep the premises clean and in good repair and free of accumulations of trash, junk, waste, and discarded matter, and to control weeds, grasses and bushes; and

h. Failing to construct and maintain housing facilities for animals so that they are structurally sound and in good repair in order to protect the animals from injury, contain them securely, and restrict other animals from entering.

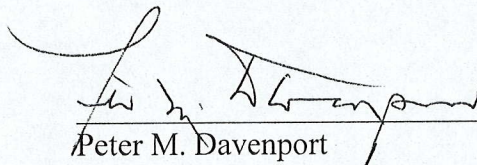
2. The Respondent is assessed a civil penalty of \$18,225.00.00 which shall be paid by a certified check or money order made payable to the Treasurer of United States.

3. The Respondent is disqualified from getting a license under the Act and regulations for three years and is prohibited from engaging in any activity requiring a license under the Act. The Respondent is disqualified from obtaining a license under the Act until the civil penalty assessed in this order is paid.

4. Pursuant to the Rules of Practice, this decision becomes final without further proceedings 35 days after service as provided in section 1.142 and 1.145 of the Rules of Practice, 7 C.F.R. §§ 1.142 and 1.145.

Copies of this Default Decision and Order shall be served upon the parties.

November 5, 2010



Peter M. Davenport
Chief Administrative Law Judge

Attorney-Advisor Procedure Check-off

Case name Short Handle

Julie Mc Gure

Docket by Act & number.

AWA-10-0046

Does case parties and case number match up
& are they consistent?

Is initial service proper via certified mail
with returned receipt card? What is name
on green card & date.

Y/C

If required initial service is via regular mail
re-mail, is it proper? Has HCO documented
the file as to regular mailing? Date mailed?

yes on 12/29/09

Has requisite time for answer elapsed?
Give dates.

*yes
12/29/09 - 1/20/10*

Is service of a proposed order proper via
certified mail with returned receipt card?

RTS

What is name showing as recipient on
returned certified mail green card? Are
address changes documented by inter-office
memo?

*Per Case Track
sent on 9/14/2010*

If required service of proposed order is via
regular mail re-mail, is it proper? Does a
note reflect date that HCO mailed via
regular mail to the last known address in
regular course of business?

Does the requested remedy match the code
section? Cite permitted sanction.

*Notice improper check mark on HCO internal
memo i.e. Certified Mail NOT UNCLAIMED BUT
UNABLE TO FORWARD.
& Ordinary Mail letter dated 9/14/10 not in file*

COURT REPORTER PERFORMANCE SHEET

JUDGE/ PRESIDING OFFICER: Victor W. Palmer

CASE CAPTION: Brian Karl Turner

DOCKET NO: AWA 09-0128

HEARING DATES: November 9-10, 2010

HEARING LOCATION: USDA/OALJ Hearing Room
1037 South Building
1400 Independence Ave, SW
NASHVILLE, TN 37203

METHOD OF COURT REPORTING REQUESTED: Audio/Microsoft

COURT REPORTER NAME:

CONTACT INFORMATION: Neal R. Gross and Co., Inc. Voice 202.234.4433

CONTRACTOR CONTACT INFORMATION: Neal R. Gross and Co., Inc. Voice 202.234.4433
Fax 202.387-7330

Was the CR punctual throughout hearing?

___ YES ___ NO

Comment:

CR's Communication Skill

Excellent ___
Good ___
Poor ___
Not Acceptable ___

Did the CR perform all requested tasks?

___ YES ___ NO

Comment:

Additional Comment(s):